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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA**

In re:

USA COMMERCIAL MORTGAGE
COMPANY,

Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**FIRST OMNIBUS OBJECTION OF
USACM TRUST TO PROOFS OF
CLAIM BASED ENTIRELY UPON
INVESTMENT IN THE MOUNTAIN
HOUSE LOAN**

Date of Hearing: July 26, 2011

Time of Hearing: 1:30 p.m.

Estimated Time for hearing: 10 min.

The USACM Liquidating Trust (the “USACM Trust”) moves this Court, pursuant to § 502 of title 11 of the United States Bankruptcy Code (the “Bankruptcy Code”) and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for an order disallowing the Proofs of Claim listed in **Exhibit A**. These claims were filed by investors (“Direct Lenders”) against USA Commercial Mortgage Company (“USACM”) based upon an investment in a loan to Pegasus-MH Ventures I, LLC (the “Borrower”). This loan was sometimes referred to as the “Mountain House Loan” and that is how the USACM Trust will refer to it here. This Objection is supported by the Court’s record and the Declarations of Geoffrey L. Berman and Edward M. Burr in Support of Omnibus Objections to Proofs of Claim Based Upon the Investment in the Mountain House Loan. (the “Berman Decl.” and “Burr Decl.”).

THIS OBJECTION DOES NOT RELATE TO AND WILL NOT IMPACT THE
DIRECT LENDERS' RIGHTS TO REPAYMENT ON THE MOUNTAIN HOUSE
LOAN, SHARE IN ANY PROCEEDS GENERATED FROM THE SALE OF THE
REAL PROPERTY SECURING THE MOUNTAIN HOUSE LOAN OR SHARE IN THE
RECOVERY OF ANY FUNDS FROM THE GUARANTOR FOR THE LOAN.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND FACTS

a. The USACM Bankruptcy

On April 13, 2006 ("Petition Date"), USACM filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Debtor continued to operate its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Debtor's post-petition management of the Debtor was under the direction of Thomas J. Allison of Mesirow Financial Interim Management, LLC, who served as the Chief Restructuring Officer.

USACM was a Nevada corporation that, prior to the Petition Date, was in the business of underwriting, originating, brokering, funding and servicing commercial loans primarily secured by real estate, both on behalf of investors and for its own account. That business included the solicitation of investors to purchase fractional interest in loans that USACM originated and then serviced. These investors are referred to as "Direct Lenders" in USACM's bankruptcy case and in this Objection.

On January 8, 2007, this Court entered its Order Confirming the "Debtors' Third Amended Joint Chapter 11 Plan of Reorganization" as Modified Herein [Docket No. 2376]. As part of the Plan, and pursuant to an Asset Purchase Agreement filed with this Court, USACM sold the servicing rights to most of the loans it serviced to Compass Partners, LLC and Compass Financial Partners, LLC ("Compass"), including the Mountain House Loan. The sale to Compass closed on February 16, 2007.

1 The USACM Trust exists as of the Effective Date of the Plan, which was March 12,
2 2007. Geoffrey L. Berman is the Trustee. Under the Plan, the USACM Trust is the
3 successor to USACM with respect to standing to seek allowance and disallowance of
4 Claims under 11 U.S.C. § 502(a).

5 Upon information derived from filings in the United States District Court, District
6 of Nevada, *3685 San Fernando Lenders Company, LLC, et al v. Compass USA SPE, LLC,*
7 *et al*, No. 2:07-cv-00892-RCJ-GWF action, the Trust believes that “Silar Advisors, LP
8 (“Silar”) financed Compass’ acquisition of the Purchased Assets, including the loan
9 service agreements in the USACM bankruptcy case and took a secured interest in those
10 Purchased Assets by executing a Master Repurchase Agreement (“Repurchase
11 Agreement”) with Compass, and by filing a UCC-1 financing statement with the State of
12 Delaware.” *Id.* Docket 1250 at 13-14 (citations to declarations omitted).

13 Further, from filings in the same action, the Trust believes that “Effective as of
14 September 26, 2007, Silar foreclosed on Compass through Asset Resolution LLC (“Asset
15 Resolution”) and took ownership of the Purchased Assets. ... Silar created Asset
16 Resolution as a ‘single purpose entity,’ conveyed all of its interests in the Repurchase
17 Agreement to Asset Resolution, and Asset Resolution properly foreclosed on the assets of
18 Compass, including the Purchased Assets.” (Citations omitted.) Asset Resolution LLC is
19 now a debtor in a chapter 7 bankruptcy case pending in Nevada, case no. BK-S-09-32824-
20 RCJ, along with certain affiliates.¹ By Order entered on July 19, 2010 by the Hon. Robert
21 C. Jones in the Asset Resolution Case, the servicing rights for 19 loans were transferred to
22 Cross, FLS. The Mountain House Loan, was among the loans whose servicing rights were
23 transferred to Cross, FLS.

24
25 ¹ 10 90 SPE LLC, Fiesta Stoneridge LLC, CFP Gramercy SPE LLC, Bundy 2.5 Million SPE LLC, CFP
26 Cornman Toltec SPE LLC, Bundy Five Million LLC, Fox Hills SPE LLC, HFAH Monaco SPE LLC,
Huntsville SPE LLC, Lake Helen Partners SPE LLC, Ocean Atlantic SPE LLC, CFP, Gess SPE LLC, CFP
Mountain House SPE LLC, and Shamrock SPE LLC.

The Trust has attempted to monitor loan collections through monitoring the district court litigation and the ARC bankruptcy case, but has received limited information concerning servicing and resolution of direct loans by Compass/Silar/Asset Resolution or their successors, including the trustee in bankruptcy for Asset Resolution. The Trust's legal counsel has also contacted Cross FLS about certain loans that it is servicing, including the Mountain House Loan. The following is the extent of the USACM Trust's information on the current servicing and status of the Mountain House Loan.

b. The Mountain House Loan

USACM circulated an Offer Sheet to prospective Direct Lenders soliciting funding for an acquisition and development loan to a borrower identified as "Pegasus-MH Ventures I, LLC." A copy of the Offer Sheet is attached hereto as **Exhibit B** and incorporated by this reference. (Berman Decl., ¶ 4.) The total loan amount proposed was \$9,750,000. The Offer Sheet described the investment as a "First Trust Deed Investment" and noted that the investment would be secured by a first deed of trust on approximately 40 acres of undeveloped land planned for a residential development located near the corner of Highway 205 and Mountain House road near Tracy, California. In addition, the Offer Sheet provided that the investment would be secured by a second deed of trust on approximately 130 acres of adjacent undeveloped land zoned for commercial development, with approximately \$5 million in equity. The Offer Sheet further provides a loan to value percentage of 50%, based on "comparative prices in the area, not including the additional collateral, which provides additional net equity of \$10,600,000." Pursuant to the Loan Agreement, the loan was intended to acquire the subject property, and to cover some pre-development costs.

On June 10, 2004, Borrower made and delivered to various lenders, including the Direct Lenders identified in **Exhibit A**, a "Promissory Note Secured by Deed of Trust" (the "Note") and a Loan Agreement. (Berman Decl., ¶ 5.) The Note and Loan Agreement

provided for a loan of \$6,960,000, with potential subsequent increases up to \$9,750,000. The Note was secured by a “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing” from the Borrower in favor of the Direct Lenders that was recorded in the official records of San Joaquin County, California on July 21, 2004 at Instrument Number 2004-160902, as were subsequent amendments to the Deed of Trust to secure subsequent advances. Pursuant to the terms of the Deed of Trust, the Direct Lenders’ investment was secured by a first position lien on what was defined therein as “Parcel 2” and a second position lien on what was defined as Parcel 1, behind a purchase money deed of trust recorded concurrently with the Deed of Trust. The Note was also supported by a Guaranty executed by William Zenklusen and Michael Clevenger on June 10, 2004.

The USACM “Loan Summary” dated July 31, 2006 and filed in this case shows that Borrower was “Performing” on the Note as of July 31, 2006, due to the fact that sufficient cash was being held by the Disbursing Agent to pay the outstanding interest due. Pursuant to the February 28, 2007 “Loan Summary” filed in this case, the loan was in interest default as of February 2007. (Berman Decl., ¶ 6.) During this bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any interim payments by the borrower in accordance with this Court’s orders.

Counsel for the Trustee has been advised by a representative of Cross, FLS that the first deed of trust covered a residential area, while the second deed of trust covered a mixed use business park. The second deed of trust on the business park has been foreclosed out, leaving only the residential area to secure the loan. The Borrower had agreed to purchase the loan from the Direct Lenders for \$1.6 million, with the Direct Lenders voting to accept the offer, but the Borrower was unable to obtain financing. The Direct Lenders are not looking to foreclose on the property. One of the guarantors, passed away recently (Mr. Zenklusen), and the other has become insolvent (Mr. Clevenger).

c. The Mountain House Claims

Exhibit A, attached, lists Proofs of Claim filed by Direct Lenders that appear to be based entirely upon an investment in the Mountain House Loan. (Burr Decl. ¶ 7.)

Exhibit A identifies the Proof of Claim number, the claimant, the claimant's address, the total amount of the claim and the total amount of the claim that appears to be related to an investment in the Mountain House Loan based upon the information provided by the claimant. (Burr Declaration ¶ 7.) The claims listed in **Exhibit A** are referred to hereafter as the "Mountain House Claims." As required by Nevada LR 3007, a copy of the first page of the proof of claim for each of the claims referenced in **Exhibit A** are attached as **Exhibit C**.

II. JURISDICTION

The Court has jurisdiction over this Objection pursuant to 28 U.S.C. §§ 1334 and 157. Venue is appropriate under 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding under 28 U.S.C. § 502 and Bankruptcy Rule 3007.

The statutory predicates for the relief requested herein are 11 U.S.C. § 502 and Bankruptcy Rule 3007.

III. APPLICABLE AUTHORITY

Under the Bankruptcy Code, any Claim for which a proof of claim has been filed will be allowed unless a party in interest objects. If a party in interest objects to the proof of claim, the Court, after notice and hearing, shall determine the amount of the Claim and shall allow the Claim except to the extent that the Claim is "unenforceable against the debtor . . . under any . . . applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. § 502(b). A properly filed proof of claim is presumed valid under Bankruptcy Rule 3001(f). However, once an objection to the proof of claim controverts the presumption, the creditor ultimately bears the burden of persuasion as to the validity and amount of the claim. *See Ashford v. Consolidated*

1 *Pioneer Mortg. (In re Consolidated Pioneer Mortg.)*, 178 B.R. 222, 226 (9th Cir. B.A.P.
2 1995), *aff'd*, 91 F.3d 151 (9th Cir. 1996).

3 **IV. THE OBJECTION**

4 The Mountain House Loan appears to have been a legitimate, arms-length
5 transaction with a third party borrower. In addition, the Direct Lenders took a known risk
6 by investing in a promissory note secured by a lien on real property.

7 USACM is not liable for the Borrower's default or any decrease in the value of the
8 collateral.

9 The Direct Lenders fail to state a claim because USACM does not appear to have
10 breached the loan servicing agreements with respect to collection of the Mountain House
11 Loan. USACM was under no duty to foreclose on the collateral securing the Mountain
12 House Loan or take any other action.

13 This objection will not affect the Direct Lenders' right to be repaid on the Mountain
14 House Loan by the Borrower or to recover from the sale of any collateral that secured the
15 Mountain House Loan or on the guarantee supporting the Mountain House Loan.

16 **V. CONCLUSION**

17 The USACM Trust respectfully requests that the Court disallow the claims against
18 USACM listed in **Exhibit A** because those claims are based entirely upon an investment in
19 the Mountain House Loan. This objection concerns only claims based upon an investment
20 in the Mountain House Loan and not any other claims of any of the Direct Lenders. The
21 USACM Trust also requests such other and further relief as is just and proper.

LEWIS
AND
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LLP
LAWYERS

Dated: June 24, 2011

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Copy of the foregoing and pertinent
portion of Exhibits mailed by first
class postage prepaid U.S. Mail on
June 24, 2011 to all parties listed on
Exhibit A attached.

LEWIS AND ROCA LLP

s/ Matt Burns
Matt Burns